

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013020371

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013040071

ORDER DENYING DISTRICT'S
MOTION TO STRIKE ISSUE 2 FROM
OAH CASE NUMBER 2013040071;
GRANTING MOTION TO
CONSOLIDATE ISSUE 2 WITH OAH
CASE NUMBER 2013020371;
GRANTING REQUEST TO VACATE
DATES IN OAH CASE NUMBER
2013020371; AND SETTING
CONSOLIDATED MATTERS FOR
HEARING

Parents on Student's behalf filed a request for due process hearing (complaint) naming the Irvine Unified School District (District) in OAH case number 2013020371 on February 8, 2013 (First Case). On March 29, 2013, Parents on Student's behalf filed a second complaint naming District in OAH case number 2013040071 (Second Case). The Second Case included two issues, and a request for an expedited hearing.

On April 8 and 9, 2013, District filed five different motions in the alternative in the Second Case. At issue in this Order is District's motion to strike Issue 2 of the Second Case, or, in the alternative, a request for consolidation of Issue 2 in the Second Case with the First Case. District also requested as part of its motion for consolidation that the non-expedited hearing dates in the Second Case be vacated and that both matters be scheduled for hearing on the dates that Student and District agreed were convenient for the First Case. District did not support the Motion with any evidence or declaration under penalty of perjury.

Student through her attorney opposed the Motion to Strike Issue 2, on April 11, 2013. However, her attorney did not address District's alternative request for consolidation, or the request to vacate dates and reset the consolidated matters for hearing in accordance with the

dates in the First Case. Her opposition was supported by a declaration under penalty of perjury from her attorney of record.

The District's motions at issue in this Order are based on the ground that Issue 2 in the Second Case is identical to Issue 2 in the First Case, and both are based upon the same facts and law. Specifically, Student alleged in both cases that she was denied a free appropriate public education (FAPE) because the District failed to consider recent health related issues as part of her secondary eligibility and failed to offer her a program that addressed her unique needs as a result of her health issues.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a FAPE, and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not grant motions for summary judgment. Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc..., OAH will not dismiss claims that have otherwise been properly pleaded. In light of the liberal notice pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing.

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).)

DISCUSSION

Student's First and Second Cases involve the same general set of facts and law. Student generally alleges that she was diagnosed with Mononucleosis in the fall of 2012; that she missed a significant time from school; that she failed to make academic progress in part because of her illness; that the District did not consider her unique needs, including her health issues, when developing an IEP during the 2012-2013 school year; and that she later acquired Post Viral Syndrome which further affected her ability to attend school on a regular basis.

The First Case includes four issues alleging that: 1) during the 2012-2013 school year, the District denied Student a FAPE by failing to develop a comprehensive individualized education program (IEP), including placement and services, that addressed all of her needs, including her health impairment; 2) District denied Student a FAPE by failing to assess her as to the impact of her health impairment on her academic performance/function, and failed to find her eligible under the additional category of other health impaired (OHI); 3) District failed to provide appropriate accommodations, modifications, goals, services, social emotional support, assistive technology, transition planning, "etc."; and 4) District failed to fully implement Student's IEP, including her special academic instruction and accommodations.

In Issue 2 of the Second Case, Student alleges that the District denied her a FAPE by failing to find her eligible under the secondary category as OHI due to her "long-term health impairment."

First, regarding the motion to strike, although Student's Issue 2 in both the First and Second Cases are, for inexplicable reasons, identical, OAH does not grant summary judgment and therefore will not summarily dismiss Issue 2 from the Second Case if it is properly pleaded, which it is. Therefore, District's motion to strike is denied.

However, regarding the motion to consolidate, consolidation of Issue 2 in the Second Case with the First Case is appropriate because it is identical to Issue 2 in the First Case. Consolidation is in the interest of judicial economy because both cases involve the same facts which will likely be supported by the same witnesses and evidence. Consolidation will avoid the possibility of conflicting results on the same issue in separate hearings. Additionally, Student has offered no evidence or argument that consolidation will cause any prejudice to the Student. Accordingly, Issue 2 in the Second Case will be consolidated with the First Case, without prejudice to Student's right to dismiss Issue 2 from the Second Case and proceed only on Issue 2 in the First Case, if she so chooses.

Regarding the dates for hearing, OAH granted a continuance of the due process hearing in the First Case on March 12, 2013 in response to joint request for continuance in which the parties agreed upon new dates. The prehearing conference (PHC) is set for June 3, 2013 at 1:30 p.m., and the due process hearing is set for June 17, 18, 19, 2013. The Second Case is scheduled for a PHC on the non-expedited issues on May 15, 2013, and for hearing

on May 23, 2013. Because the hearing dates in the First Case were jointly agreed to by the parties, the hearing dates in the Second Case will be vacated, and the consolidated matter will be continued to dates set in the First Case in order to accommodate District's request for consolidation.

ORDER

1. District's motion to strike Issue 2 from OAH case number 2013040071 (Second Case) is denied.
2. District's Motion in the alternative to consolidate Issue 2 in OAH case number 2013040071 (Second Case) with the issues in OAH case number 2013020371 (First Case) is granted.
3. All dates for the non-expedited issues previously set in OAH Case Number 2013040071 (Second Case) are vacated.
4. This Order shall have no effect on the dates scheduled for hearing in the expedited issues of OAH Case Number 2013040071 (Second Case).
5. The dates in the consolidated matter shall be as follows:

Telephonic PHC: June 3, 2013 at 1:30 p.m.
Due Process Hearing: June 17, 18, 19, 2013, and continuing day to day, Monday through Thursday, as needed and as determined by the hearing judge.
6. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2013020371 (First Case).

Dated: April 15, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings